

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TERRENCE ZEHRRER, Derivatively on)
Behalf of HARBOR INTERNATIONAL)
FUND,)
Plaintiff,)
v.)
HARBOR CAPITAL ADVISORS, INC.,)
Defendant,)
-and-)
HARBOR INTERNATIONAL FUND,)
Nominal Defendant.)

No. 14 cv 789

Judge Joan H. Lefkow

MOTION FOR A FINDING OF RELATEDNESS

Plaintiff, Ruth Tumpowsky, by her counsel, in *Tumpowsky v. Harbor Capital Advisors, Inc.*, 14 C 7210 ("Tumpowsky"), requests that this Court make a finding pursuant to Local Rule 40.4, that her action is related to the above-captioned action which has been assigned to this Court, and in support, states:

1. On February 4, 2014, Terrence Zehrer commenced this action (“*Zehrer*”). A copy of the *Zehrer* complaint is attached as Exhibit A.
2. On September 19, 2014, Plaintiff, Ruth Tumpowsky, commenced *Tumpowsky*, which was assigned to Judge Gentleman. A copy of the *Tumpowsky* complaint is attached as Exhibit B.
3. Both actions satisfy the definition of “Related” contained in LR4O.4(a)

5. Both *Zehrer* and *Tumpowsky* arise from the Defendant Harbor Capital Advisors, Inc.'s ("HCA") alleged breach of its fiduciary obligations in violation of the Investment Company Act, and both cases involve the same issues of fact. Coordination of *Tumpowsky* with the *Zehrer* will greatly facilitate resolution of the claims alleged in the actions. LR4O.4(a)(2 and 3).

LR4O.4(b) Requirements are Satisfied

6. Both actions are pending in this court. LR4O.4(b)(1).
7. Plaintiff *Tumpowsky* believes that judicial economy will be promoted by relating these actions so that there will not be a duplication of motion practice, discovery and other pre-trial proceedings and will avoid any possible inconsistent rulings on similar issues. LR4O.4(b)(2).
8. HCA's alleged misconduct underlying Plaintiffs' claims is substantially the same.
9. Even though the motion to dismiss in *Zehrer* has been fully briefed, this Court has not decided the motion and, therefore, *Zehrer* has not progressed to the point where designating these cases as related would likely delay the proceedings in this earlier filed action. Further, the handling and management of the actions by the same judge is likely to result in a substantial saving of judicial time and effort. LR4O.4(b)(3).
10. Both actions name the same primary Defendant.
11. Both *Zehrer* and *Tumpowsky* have requested trial by jury.
12. Since both actions arise from the same common core of Defendant's wrongful conduct, there are substantial pre-trial proceedings which can and should be coordinated and accomplished.
13. Accordingly, *Zehrer* and *Tumpowsky* are susceptible to disposition in a single

proceeding. LR4O.4(b)(4).

14. In addition, the actions can also be consolidated pursuant to FED.R.CIV.P. 42(a).

WHEREFORE, Plaintiff Ruth Tumpowsky requests this Court to make a finding pursuant to Local Rule 40.4 that the *Tumpowsky* action is related to the *Zehrer* action.

Dated: September 30, 2014

Respectfully submitted,

By: /s/ Marvin A. Miller
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CERTIFICATE OF SERVICE

I, Marvin A. Miller, one of the attorneys for plaintiff, hereby certify that on September 30, 2014, service of the foregoing ***Motion for a Finding of Relatedness*** was accomplished pursuant to ECF as to Filing Users and I shall comply with LR 5.5 as to any party who is not a Filing User or represented by a Filing User.

/s/Marvin A. Miller
Marvin A. Miller